

**UNITED STATES DISTRICT COURT
SOUTHERN DISTRICT OF TEXAS**

**HOUSTON GRANITE AND MARBLE
CENTER, LLC**
Plaintiff,

V.

**DRT TRANSPORTATION LLC AND
LMP TRUCKING , LLC**
Defendants.

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CASE NO: 4:19-CV-04938

PLAINTIFF'S RESPONSE TO DEFENDANT'S MOTION TO DISMISS

TO THE HONORABLE JUDGE OF SAID COURT:

NOW COMES Plaintiff, Houston Granite and Marble Center, LLC, and files this Response to Defendant's Motion to Dismiss and respectfully states:

I. BACKGROUND

1. Plaintiff Houston Granite and Marble Center, LLC ("HGM") is a business engaged in providing custom marble countertops to customers. These countertops are custom made for each customer and specifically cut to the customer's required specifications. HGM contracted with DRT Transportation, LLC to transport a load of custom pre-cut marble/granite that was valued at over \$250,000.00 from its facility in Houston, Texas to its customer in Stillwater, Oklahoma. DRT subcontracted the actual transportation to LMP Trucking, LLC ("LMP"). LMP and its driver was responsible for making sure that the load was properly secured and that it remained secure during its transportation to Oklahoma. The individual that had fabricated the counters and was going to install them at the location in Oklahoma followed LMP Trucking from HGM's site for the trip. LMP Trucking never stopped on the road before reaching Dallas, Texas to check the load to determine that it was still secure. LMP's driver reported to DRT that while he was exiting onto a flyover to head to Oklahoma that the load had shifted causing the spill. The

load was a complete loss which had to be replaced.

II. SUMMARY OF ARGUMENT

2. Defendant's argument is without merit. Plaintiff has answered all of Defendant's discovery in full and responded to Defendant's additional discovery. Plaintiff did not oppose Defendant's request for additional discovery. Further, Defendant's argument that Plaintiff has failed to prosecute the case also is without merit. Defendant cites no authority that requires Plaintiff to engage in affirmative discovery especially since Plaintiff believes that its witnesses in this matter will be available and testify at trial.

III. ARGUMENTS AND AUTHORITIES

3. Plaintiff has fully answered Defendant's discovery and produced all documents that it has with respect to the incident made the basis of this suit as well as its damages. Plaintiff initially produced the documents in mass as they had been received. Subsequently, Plaintiff produced the documents broken down by request. Similarly, Plaintiff supplemented its response to Defendant's interrogatories. Plaintiff has responded to Defendant's additional discovery which Plaintiff did not contest. After receiving Plaintiff's responses, Defendant never requested any depositions, which Plaintiff would have agreed to beyond the discovery period. Plaintiff will still agree to allow Defendant to take fact witness depositions. Defendant's Motion should be denied and the case should be allowed to proceed to trial.

WHEREFORE PREMISES CONSIDERED Plaintiff Houston Granite and Marble prays that Defendant's Motion to Dismiss be denied.

Respectfully submitted,

By: /s/ R. Scott Wolfrom

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CERTIFICATE OF SERVICE

I certify that on June 7, 2021 a true and correct copy of Plaintiff's Response to Defendant's Motion for Summary Judgment was served on Mark W. Schilling electronically through the electronic filing manager.

/s/ R. Scott Wolfrom

R. Scott Wolfrom

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